

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>THOMAS SPOTTED BEAR,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>DARWIN LONG, AOF Administrator, in their official capacity; JEAN WHIRLWIND HORSE, Director of Corrections, in their individual and official capacity; RONDA BELILE, Sargent of Corrections, in their individual and official capacity; and C-O IRINE RONE EAGLE, Correctional Officer, in their individual and official capacity,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">5:25-CV-05055-RAL</p> <p style="text-align: center;">ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY AN INITIAL PARTIAL FILING FEE</p>
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Plaintiff Thomas Spotted Bear an inmate at the Adult Offenders Facility in Pine Ridge, South Dakota, filed a pro se civil rights lawsuit. Doc. 1. Spotted Bear filed a motion for leave to proceed in forma pauperis and provided this Court with a certified copy of his prisoner trust account report. Docs. 2, 3.

Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The Court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.” Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting McGore v. Wrigglesworth, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Spotted Bear reports an average monthly balance for the past six months in his prisoner trust account of \$20.00 and an average monthly deposit of \$40.00. Doc. 3 at 1. Based on this information, the Court grants Spotted Bear leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$8.00 (20 percent of his average monthly deposits). Spotted Bear must pay the initial partial filing fee of **\$8.00 by August 8, 2025**. His failure to pay the initial partial filing fee by August 8, 2025, will result in the dismissal without prejudice of his complaint.

In order to pay his filing fee, Spotted Bear must "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner's institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). The installments will be collected pursuant to this procedure. The Clerk of Court will send a copy of this order to the appropriate financial official at Spotted Bear's institution. Spotted Bear remains responsible for the entire filing fee, as long as he is a prisoner.

See In re Tyler, 110 F.3d 528, 529–30 (8th Cir. 1997).

Accordingly, it is

ORDERED that Spotted Bear's motion for leave to proceed in forma pauperis, Doc. 2, is granted. Spotted Bear will make a payment of **\$8.00 by August 8, 2025**, made payable to the Clerk, U.S. District Court. If Spotted Bear does not pay the initial partial filing fee by August 8, 2025, his complaint will be dismissed without prejudice for failure to prosecute. It is further

ORDERED that the Clerk of Court will send a copy of this order to the appropriate financial official at Spotted Bear's institution. It is finally

ORDERED that the institution having custody of Spotted Bear is directed that whenever the amount in Spotted Bear's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Spotted Bear's trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED July 10th, 2025.

BY THE COURT:


ROBERTO A. LANGE
CHIEF JUDGE